v. *Marks*, 64 N. W. Rep. (Minn.) 561. In English decisions throughout this century, however, there has been an increasing number of dicta questioning the accepted rule, which Lord Herschell in his majority opinion fails to explain adequately. *Durant* v. *Durant*, 1 Haggard, Eccl. Rep. 733; *Paterson* v. *Paterson*, 3 H. of L. Cas. 308. Marriage and the relations arising from it form perhaps the one class of cases where the historical argument is of the least value; it must be remembered that this argument carried to its full length would require us to consider a married woman in the light of a slave.

History is not sufficient for a solution of the present difficulty. No more to the purpose are the general considerations borrowed from the law of torts, where mental injury alone cannot form a ground for recovery of damages. Actions of tort, with few exceptions, are based upon material injury to the plaintiff; the present action, on the other hand, deals with injury to the complex and delicate relations arising from the status of husband and wife; and it seems antiquated and superficial to hold that this status may not be violated without endangering life or health. It would be difficult to dispute the propriety of the position taken by the Supreme Court of New York in the case of *Lutz* v. *Lutz*, 9 N. Y. Supp. 858, that persistent malicious accusations made by a husband against his wife's chastity in the presence of her children was an exquisite refinement of cruelty worse than physical torture. The majority of the House of Lords meet this argument by saying that such treatment would injure the wife's health, and would thus come within their definition. But it is not extravagant to contend that this treatment is cruelty in itself, without regard to its consequences; and this doctrine, which is maintained by the minority in the present case, may well become the law in jurisdictions where the question is still *res integra*.

Evidence of other Crimes than the one Charged. — The case of *People* v. *Zucker*, 46 N. Y. Supp. 766, recently decided by the Supreme Court of New York, suggests, if it does not actually raise, an interesting and difficult point in the law of evidence. At the trial of the defendant for arson, consisting in the burning of a building in New York, the judge allowed the government, for the purpose of corroborating its principal witness, to put in evidence tending to prove that the defendant was guilty of previously wilfully setting fire to a building in Newark, N. J. The Supreme Court, by a vote of three to two, held that this was not reversible error. The material facts were as follows. The furniture in the New York building had been removed to that in Newark, the fires took place within three days of each other, and the motive in both cases was to defraud the insurance companies. Relying on these facts the majority held that the two crimes were part of one and the same scheme, each being the supplement of the other, and neither being complete alone. The minority, in the able opinion of Ingraham, J., deny that the two crimes were connected otherwise than as crimes of a similar nature committed for a similar purpose.

The decision of the majority, on their interpretation of the facts, would seem to be sound. Evidence of a previous crime connected with the actual commission of the one charged, in the sense of making the latter easier, safer, or more effective, was admitted in *Commonwealth* v. *Robinson*, 146 Mass. 571, and the principle is recognized in *People* v. *Sharp*, 107

N. Y. 427, 466. And in this connection may be repeated the example often given, that where one commits larceny of a weapon with which to do murder, evidence of the larceny may come in during the murder trial. The point raised by the minority opinion, however, presents a more difficult question. May evidence of crimes other than the one charged and unconnected with it, but of a precisely similar nature and done for a precisely similar purpose, be admitted to prove the crime charged, if not unreasonably separated in time? It is necessary to understand exactly the limits of the problem. Acts such as are suggested in the question certainly come under the general description of acts done for a common purpose. It is to be noted, however, that the ultimate purpose or result is not the final crime, the one for which the defendant is being tried, but a fixed and constant quantity outside of all the crimes, and having an equal influence on each. In *People* v. *Zucker*, *supra*, for instance, the constant quantity is the scheme to obtain insurance money generally; the similar acts are wilfully setting fire to buildings insured. Evidence of the sort under consideration has been admitted to show intent where it determines the nature of the specific act; as whether false representations were made knowingly or not; *Reg.* v. *Francis*, L. R. 2 C. C. R. 128; or whether a building was fired by design or accident; *Commonwealth* v. *McCarty*, 119 Mass. 354. Should it ever come in as tending to prove the crime itself by means of bringing out more strongly the probable motive when there is no question as to the character of the act? The rule that what merely tends to show the defendant to be a bad man, likely to commit crime, is inadmissible, rests on obvious considerations of justice, and is not to be questioned. Whether evidence of similar acts, near in point of time, unconnected with each other, but all traceable to the one fixed purpose, must be always rejected as falling under this general rule, is in the present state of the authorities worthy the serious consideration of those who try criminal cases.

HABEAS CORPUS — FEDERAL AND STATE JURISDICTIONS. — A striking illustration of the apparently violent conflict that must occasionally arise between two jurisdictions covering the same territory, as our State and Federal courts cover almost every part of the territory of the United States, is afforded by the case *In Re Waite*, 81 Fed. Rep. 359, decided this summer in the District Court of Northern Iowa. A duly authorized pension examiner was indicted in the Iowa courts, under a statute of that State, for threatening to prosecute a person for perjury in order to compel him to sign certain papers. He was convicted; and the decision was affirmed by the Iowa Supreme Court. On his petition to the District Court, the Federal judge issued a writ of *habeas corpus* for his release from custody by the State authorities. This nullification of a decision of the highest court of a State by the summary action of a single judge in the lowest grade of the Federal courts, was justified upon the principle that the courts of the United States have jurisdiction over all acts committed by Federal officers while engaged in the performance of their duties under the laws of the United States. The acts complained of being apparently committed by this pension examiner in the general course of his duties, the question whether they were really justified by his authority, it was declared, ought to be judged only by the Federal courts. Such an assertion of this principle as the issue of the writ of *habeas corpus* in this case would probably have startled the framers of the Constitution. Yet the